IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 2ND JANUARY 2007 / 12TH PAUSHA 1928

OP.No. 8034 of 2002(F)

PETITIONER:
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1. **T.M.LUKA, S/O. MATHAI,(DIED)**
   THUKKENKOTTIL HOUSE, MUTTOM P.O.,THODUPUZHA TALUK,
   IDUKKI DISTRICT.

   *** ADDL. PETITIONER IMPLEADED**

2. **LUCY LUKE , AGED 49, W/O.LATE T.M.LUKA**
   THUKKENKOTTIL HOUSE, MUTTOM P.O.,
   THODUPUZHA TALUK, IDUKKI DISTRICT.

3. **MATHEW T. LUKA, AGED 25 YEARS,**
   S/O. LATE T.M.LUKA, HTHUKKENKOTTIL HOUSE,
   MOTTOM P.O. THODUPUZHA TALUK,
   IDUKKI DISTRICT.

4. **JIM T.LUKA, AGED 23 YEARS,S/O. LATE T.M.LUKA,**
   THUKKENKOTTIL HOUSE, MUTTOM P.O.,
   THODUPUZHA TALUK, IDUKKI DISTRICT.

5. **PRIYANKA E., LUKA AGED 14 YEARS (MINOR)**
   D/O.LATE T.M.LUKA, THUKKENKOTTIL HOUSE,
   MUTTOM P.O., THODUPUZHA TALUK,
   IDUKKI DISTRICT, REP.BY HER MOTHER AND GUARDIAN
   LUCY LUKE, THE ADDL.2ND PETITIONER.

*** ADDL.PETITIONERS AS LEGAL HEIRS OF DECEASED (SOLE) PETITIONER IMPLEADED AS PER ORDER DT.4.3.2005 IN IA. NO.3108/05.**

BY ADV. SRI.P.RAVINDRA BABU
SRI.SURIN GEORGE IPE

O.P. NO.8034/2002

RESPONDENTS:
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1. **TODDY WORKERS WELFARE FUND INSPECTOR-II, KOTTAYAM, TODDY WORKERS WELFARE FUND BOARD, KOTTAYAM.**

2. **SECRETARY, LABOUR AND REHABILITATION (S) DEPARTMENT, GOVT. OF KERALA, THIRUVANANTHAPURAM.**

3. **K.J.MANI, S/O. JOHN, KAITHAKKAL, POONJAR P.O., MEENACHIL TALUK.**

BY ADV. SRI.K.K.BABU
GOVERNMENT PLEADER SRI.SURARSHAN
SRI.A.K.JOHN, SC, KTWWF BOARD

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 02/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S. SIRI JAGAN, J.

O.P. No. 8034 OF 2002 F

Dated this the 2nd day of January, 2007

J U D G M E N T

The petitioner, who died during the pendency of this original petition, challenged Ext.P2 final determination order and Ext.P3 appellate order passed by the 1st and 2nd respondents respectively under the Kerala Toddy Workers' Welfare Fund Act by which the petitioner was assessed to welfare fund contributions under the Act. His widow and children have impleaded themselves as additional petitioners 2 to 5 in the original petition by virtue of orders in I.A. No.3108 of 2005. Their contention is that although the 1st petitioner was a licensee of the toddy shops in question namely, T.S. Nos.134, 135, 136, 137, 138, 147, 150, 151, 161 and 162 of Pala Excise Range in Kottayam district, for the year 1998-99, he was not the licensee for the year 1999-00, for which year Ext.P2 final determination order has been passed. The petitioner submits that the 3rd respondent, Sri.K.J.Mani, was admittedly the licensee and the petitioner did not have any connection whatsoever with the shops in question for that year. For that reason, the petitioner submits that Exts.P2 and P3 orders are liable to be quashed.

2. I have heard counsel on both sides. The learned standing counsel appearing for the 1st respondent as well as the Government Pleader stoutly opposes the contention of the petitioner. They would submit that there was sufficient evidence before the 1st respondent to conclude that the 1st

petitioner was the de facto employer and, therefore, he would liable to pay the contributions under the Act for which alone Exts.P2 and P3 orders have been issued.

3. I have considered the submission on both sides.

4. Ext.P2 is the final determination order. It is not disputed before me that the 3rd respondent is the licensee of the shop. In fact, the 3rd respondent himself admits that fact and he has not even chosen to appear before this court to dispute his liability although he has been made a party to the writ petition, and notice was served upon him. In the above circumstances, I have to examine on what material on record the 1st respondent has come to the conclusion that the 1st petitioner is the de facto employer. From Ext.P2, I find that he has come to this conclusion on the basis of the deposition of workers of the toddy shop. He himself has summarized the deposition of these workers in Ext.P2 itself. Going by the same, the evidence available with the 1st respondent is as follows. WW1 deposed that the shop Nos.134, 135 and 136 were conducted by a company and that the 3rd respondent licensee and the 1st petitioner together were conducting the toddy shops. He also deposed that when bonus was not paid he went to the office of the 1st petitioner. WW2 deposed that the 1st petitioner used to come to these shops sometimes. WW3 deposed that the 1st petitioner was the contractor of shop No.147. WW5 deposed that the contractor of shop No.138 was the petitioner but he never came to the shop. WW6 deposed that the contractor of the shops for the year 1999-00 was the 1st petitioner. The 1st respondent came to the conclusion that the 1st petitioner

was the de facto employer solely based on this depositions. I am not satisfied that such a conclusion can be arrived on the basis of these deposition because on the very face of these deposition are contradictory in nature and the admitted fact that the petitioner was not the contractor/licensee for the year 1999-00. In fact, some of the witnesses would go to say that the 1st petitioner never came to the shop at all and some other would say that he used to come to the shop at times. The 1st petitioner's contention was that he used to go to the shop only in his capacity as the office bearer of contractors association. The fact that when the 3rd respondent himself categorically admits that he himself was the licensee and employer, I do not think that this evidence is sufficient to rope in the 1st petitioner as the de facto employer of the toddy shops in question so as to mulct him with the liability to pay contributions under the Toddy Workers' Welfare Fund Act. As such, I am of opinion that Exts.P2 and P3 as against the 1st petitioner is unsustainable and liable to be quashed. I do so. However, this shall not prejudice the right of the 1st respondent to recover the contributions from the 3rd respondent who was the licensee and employer of the toddy shops in question.

The original petition is disposed of as above.

(S. SIRI JAGAN, JUDGE)

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S. SIRI JAGAN , J.

OP No.8034/02 F

J U D G M E N T

2nd January, 2007